

COMMISSIONERS APPROVAL

CHILCOTT *g*

LUND *BL*

THOMPSON *at*

TAYLOR (Clerk & Recorder)

Date.....May 2, 2006

Members Present.....Commissioner Greg Chilcott, Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met with Airport Manager Red Caldwell in regard to his absence from the Airport. Due to the nature of this meeting, Red requested the door be closed under Montana Statutes.

In other business the Board met for a Request for Commission Action on the Sunnyside Orchards Block 4, Lots 14 & 15. Present at this meeting was Planner Ben Howell, Consultant John Horat and the Developers KL Development.

Commissioner Lund read the following statement:

Today's agenda includes one or more land use issues. Because of my years of service as Ravalli County Clerk & Recorder and now as Commissioner and because members of my family are involved in the real estate profession, I am providing this statement in the interest of full and open disclosure. My husband, son and brother-in-law are realtors who conduct business in this county. I do not participate in their real estate business or related matters except as the passive title owner of the building rented by their real estate business. Although connections with my family or their business and the land use issues facing us today are possible, I am not aware of any direct connections and thus do not believe I have any conflicts of interest arising out of my participation in today's meeting.

Ben presented a power point presentation and entered the Request for Commission Action into the record as follows:



## REQUEST FOR COMMISSION

### ACTION

OG-06-04-460

Site Visit: April 27, 2006 @ 3:30 p.m.  
Meeting: May 2, 2006 @ 9:00 a.m.  
Request: To approve the Sunnyside Orchards Block 4, Lots 14 & 15, AP (K & L Development) Major Subdivision

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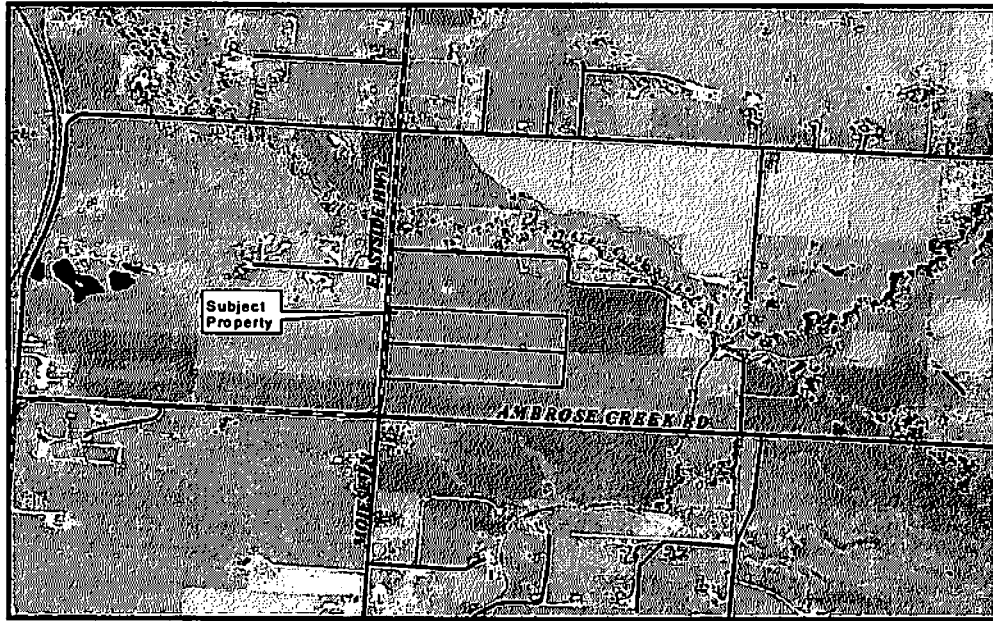
#### I. ACTION REQUESTED

This is a request from K & L Development, represented by Bitterroot Engineering & Design, to create the **Sunnyside Orchards Block 4, Lots 14 & 15, AP Major Subdivision**

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#### II. BACKGROUND

The Sunnyside Orchards Block 4, Lots 14 & 15, AP (K & L Development) Major Subdivision is a nineteen-lot subdivision of 19.99 acres located northeast of Stevensville (Map 1). There are no existing structures on the property, and the proposed subdivision is located approximately five miles northeast of Stevensville. The property is level, and has been used for agriculture in the past. *Staff recommended conditional approval of the subdivision proposal.*



**Map 1: Location Map**

(Source Data: Ravalli County Planning Department)

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### III. INFORMATION RECEIVED AT PLANNING BOARD HEARING

At the public hearing conducted by the Planning Board on April 5, 2006, it was revealed that the property has irrigation water shares from the Supply Ditch Association. Staff was unable to determine how many shares the applicant has, but the consultant indicated that there were enough to irrigate the entire property. The consultant stated that the applicants were not planning to use their shares on this property, but were willing to mitigate any potential impacts of the subdivision on agricultural water user facilities by voluntarily maintaining the irrigation ditch on the eastern boundary of the subdivision through a Homeowners' Association to prevent flooding of the property when the property to the east is flood irrigated.

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### IV. PLANNING BOARD RECOMMENDATION

The Ravalli County Planning Board conducted a plat evaluation on this proposal on March 15, 2006 and a public hearing on April 5, 2006. They took the following actions:

The Board reviewed the subdivision proposal against the six criteria as follows:

1. Effects on agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or practices. *Four Board Members agreed the effects were non-significant and two Board Members found them significant.*

2. Effects on Agricultural water-user facilities. *All agreed the effects were non-significant.*
3. Effects on local services, including public road system, police and fire protection, utilities, and public schools. *Four Board Members agreed the effects were non-significant and two Board Members found them significant.*
4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds. *All agreed the effects were non-significant.*
5. Effects on wildlife and wildlife habitat, including fisheries and mammals. *All agreed the effects were non-significant.*
6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas. *Four Board Members agreed the effects were non-significant and two Board Members found them significant.*

The Board made a motion to **approve** the subdivision based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report, amending Condition 10 to state that an encumbrance of \$250 per lot to be made to the Stevensville School District upon first conveyance, including lease or rent, of each lot shall be placed on the final plat; adding Condition 13 to state that the Homeowners Association will maintain the irrigation ditch traversing the eastern property boundary; and adding Condition 14 to state that the applicant and the Planning Department shall work on an agreement between the applicant and the property owner(s) to the east for road improvement reimbursement on the internal subdivision road if the property to the east is subdivided and wishes to use the conditional public access and utility easement. **The Board voted 4-2 to approve this motion.**

*Comments from the meeting are contained in the record.*

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#### **V. PLANNING BOARD'S RECOMMENDED MOTIONS**

(Changes to staff's recommended motion is in underline/~~strikeout~~.)

That the Sunnyside Orchards Block 4, Lots 14 & 15, AP Major Subdivision be ***approved***, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report as amended herein.

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#### **VI. PLANNING BOARD'S RECOMMENDED CONDITIONS**

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(Changes to staff's recommended motion is in underline/~~strikeout~~.)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Notification of Proximity to Agricultural Operations.*** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (Effects on Agriculture)

***Notification of Irrigation Ditch/Pipeline Easements.*** Within this subdivision there are irrigation easements. All downstream water right holders have the right to maintain and repair their ditches/pipelines and diversion structures whenever necessary to keep them in good condition. The filed subdivision plat shows irrigation ditches and easements on the property. The downstream water rights holders must approve any relocation or alteration (i.e. installation of a culvert) of an irrigation ditch or pipeline. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders have the right to use the easement to maintain the ditch or pipeline. (Effects on Agricultural Water User Facilities)

***Lots within this subdivision do not currently have the right to take irrigation water out of the ditch or buried irrigation pipeline located within the subdivision. Taking water without a water right for irrigation purposes is illegal.*** (Effects on Agricultural Water User Facilities)

***Limitation of Access onto a State Road.*** A "no ingress/egress" restriction is located along the Eastside Highway frontage of the subdivision, which precludes vehicular access onto this State-maintained road, excepting the approved approach for the internal subdivision road. This limitation of access may be lifted or amended with approval of the MDT. (Effects on Local Services)

***Notification of Road Maintenance Agreement.*** Ravalli County, the State of Montana, or any other governmental entity does not maintain the internal subdivision road and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for this road was filed with this subdivision and outlines what parties are responsible for maintenance and under what conditions. (Effects on Local Services)

***Notification of Severe Soils.*** Within this subdivision there are areas of the property identified as potentially having soils rated as severe for roads and

building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils are included as exhibits to this document. (The applicant shall include the exhibits as attachments) (Effects on Public Health and Safety)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

***Living with Wildlife.*** (See Exhibit A-1 for required provisions.) (Effects on Agriculture, Natural Environment, Wildlife and Wildlife Habitat, and Public Health and Safety)

***Waiver of Protest to Creation of RSID/SID.*** Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to creating and/or improving a community water or wastewater treatment system and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (Effects on Local Services)

***Required Posting of County-Issued Addresses for Lots within this Subdivision.*** The Three Mile Fire District has adopted the Uniform Fire Code (UFC), which requires lot owners to post County-issued addresses at the intersection of the driveway leading to the primary residence and the accessing road as soon as construction on the residence begins. (Effects on Public Health and Safety)

***Access Requirements for Lots within this Subdivision.*** All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6", and an all weather surface that can accommodate the weight of a fire truck to meet requirements of the UFC. Please contact the Three Mile Rural Fire District for further information on the requirements of the Three Mile Rural Fire District and/or the UFC. (Effects on Local Services)

***Primary Heat Source.*** The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. (Effects on Natural Environment)

***Lighting for New Construction.*** Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded,

top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. (Effects on Public Health & Safety)

**Control of Noxious Weeds.** Lot owners shall control the growth of noxious weeds on their respective lot(s). (Effects on Natural Environment)

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. (Effects on Public Health and Safety)

**Amendment.** The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. (Effects on all six criteria)

3. The subdivider shall include an RSID/SID waiver in a notarized document filed with the subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. (Effects on Local Services)
4. A conditional public road and utility easement shall be shown on the final plat along the common boundary of Lots 14-10 and 15-9 from the end of the internal subdivision road's cul-de-sac to the eastern property. The easement shall be labeled as a conditional public road and utility easement on the final plat. The following statement shall be on the final plat: "Development of the road to meet County Standards within this easement shall be the responsibility of the property owner(s) to the east. Furthermore, when this easement is developed and opened to the property(ies) to the east, those properties that have beneficial use of the easement shall be annexed into the road maintenance agreement for the internal subdivision road." (Effects on Local Services)
5. The internal subdivision road shall be labeled as a privately-maintained road within a public road and utility easement on the final plat. (Effects on Local Services)
6. The applicant shall install a stop sign and road name sign on the internal subdivision road at the intersection with Eastside Highway, reviewed by the Road and Bridge Department, and approved by the Planning Department prior to final plat approval. (Effects on Local Services and Public Health and Safety)

7. The final plat shall show a no ingress/egress zone along the Eastside Highway frontage of the subdivision, excepting the approved approach for the internal subdivision road. (Effects on Local Services and Variance)
8. The Road Maintenance Agreement for the internal subdivision road shall include the maintenance of storm water drainage facilities. It shall also state that the other parcels which may have beneficial use of the internal subdivision road shall be allowed to join as members of the agreement without the consent of the current members. (Effects on Local Services)
9. The applicant shall meet the water supply requirements for the Three Mile Fire District, which is a 1,000-gallon per minute water supply or a 2,500 gallon per lot water storage. Alternatively, the applicant can contribute \$500 per lot and provide a letter from the Three Mile Fire District that the contribution has been made prior to final plat approval. (Effects on Local Services & Public Health and Safety)
10. The applicant shall ~~provide evidence that \$250 per lot has been contributed to the Stevensville School District prior to final plat approval~~ place an encumbrance of \$250 per lot to the Stevensville School District upon first conveyance of each lot, including lease or rent, on the final plat. (Effects on Local Services)
11. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Effects on Public Health and Safety)
12. The existing irrigation easement shall be shown on the final plat as shown on the preliminary plat. (Effects on Agricultural Water User Facilities)
13. A Homeowners' Association shall be created and a provision included that they are responsible for maintenance of the irrigation ditch traversing the east property boundary of this subdivision.
14. The applicant shall work with the County on an agreement between the Sunnyside Orchards Block 4, Lots 14 & 15, AP subdivision and the property owner(s) to the east for road improvement reimbursement on the internal subdivision road if and when the property to the east is subdivided and meets the conditions required in order to get access off the internal subdivision road.

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REMAINING ISSUES: None.

FISCAL IMPACT: No extraordinary fiscal impacts noted.

ATTACHMENTS: Application package  
Staff Report with attachments  
Planning Board meeting minutes for the April 5, 2006 public hearing (includes additional public comment letters and agency comment letter received after Staff Report was published)



**STAFF:**  
**DATE:**

Benjamin H. Howell  
April 13, 2006

Public comment was called for as follows.

John stated the only correction is the Request for Commission that he sees needs correction is that it reads the 'property has water rights'. The applicants plan on putting in irrigation systems with the wells at 40', and each lot will have their own well. They agree with the recommendations and the staff report is complete. He noted the Planning Staff agreed to continue the cul-de-sac out to the east. The Planning Board agreed and further stated this is a public road with the road conditional.

No one spoke in opposition. Public comment was then closed. Board deliberation took place.

Commissioner Lund stated she is confused about condition #4; 'conditional public road' with the development of the road to be responsibility of the property owners' to the east. Ben stated if the property to the east ever subdivides, those property owners' would be responsible to build a county standard road from the easement to the county road. Commissioner Lund stated she understands what this is saying, but it is confusing and should be worded differently.

Commissioner Chilcott stated this is clear to him. Commissioner Thompson stated the language should be clearer, in that if the road beyond the cul-de-sac is ever developed, then it is the responsibility of those property owners to the east. There was some discussion of the language on the plat. Commissioner Chilcott stated 'who knows what the county standards will be in the future?' John stated this application came in under the old standards and no matter what they do today this will need to be re-visited at a later time.

Ben stated the reason they utilized the 'conditional' was they want to recognize the connectivity of this cul-de-sac into another road if the property to the east was ever developed. Commissioner Chilcott agreed the property owners to the east (the Langsled's) would be responsible for any road improvement from the cul-de-sac to the east if they ever subdivided. Commissioner Chilcott suggested they simply amend condition #4 to state 'if the property to the east is ever subdivided'.

Ben stated condition #5 addresses the actual road which is Fox Tail Road. This is a private road with utility easements that service the lot. Condition #4 is addressing the easement, which is 150' long from the cul-de-sac to the eastern property line.

Commissioner Lund addressed #7 and the local services. She stated the word variance needs to be removed due to a typo. Commissioner Lund addressed the staff report under

#11 for cash in lieu of parkland and the appraisal date. Ben stated the date is August 5, 2005 and this was submitted July 12, 2005. Commissioner Lund also addressed the possibility of having a bus shelter for the children. She asked if Lot 14-1 or 15-1 could have a shelter built for the kids while they are waiting for the bus. Discussion included the bus going into the subdivision, which is not within the school policy (going onto a private road). KL Development stated they are going to have gateway at the beginning of the development and asked if they could build something at that time. They also asked if they could build the shelter when 25% of the lots sell. The Board concurred that would be appropriate.

Commissioner Thompson suggested a correction on the preliminary plat for the actual mileage to Stevensville. He also addressed a complaint from a neighbor for speeding cars that exit out of the subdivision. He asked if they met all of the requirements for site distance. John stated MDOT has issued a permit for the access and it does meet the requirements.

Commissioner Lund asked if the area to the south developed, how the vehicles would come out on to the highway. John stated they would probably exit out from Ambrose. Commissioner Lund asked if they could place an easement to allow an exit out to the south. John stated they could visit with Road Department at the development of Lot 16. He stated the state would not grant an approach off the highway if they can exit from a county road.

Commissioner Chilcott stated he appreciates the future connectivity language from the cul-de-sac to the east. He thanked the staff and consultants for doing a nice job.

Commissioner Lund made a motion that the Sunnyside Orchards Block 4, Lots 14 & 15, AP Major Subdivision be approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report as amended herein, with the language change in condition #4 as discussed, and adding condition #15 which requires the construction of a shelter building for children waiting for the bus, and to be built when 25% of the lots are sold. Commissioner Thompson seconded the motion and all voted "aye".

The meeting was adjourned.

Commissioner Chilcott participated in a MACo conference call during a portion of the morning.

The Board met with Administrative Officer Skip Rosenthal and Sharon Schroeder in regard to the EDI Grant to HUD for the Daly Mansion renovation and restoration. Sharon stated they submitted another application and have tentatively received \$297,000.00. There will be no environmental reviews because this is a continuation of the previous grant monies. They are required to have another public hearing with legal notice on this second phase of monies they hope to receive. Since this is an application through HUD, the monies come through the federal government and they must follow the

federal requirements through HUD. Sharon stated the budget for this restoration is at 2.2 million and they have raised 1.7 million. They have spent 1.2 million. They only need a half a million dollars to finish the project. This \$297,000.00 will go along way to finish the restoration. This Daly Mansion is on the National Historic Register and the Arc hectic has to be registered as a historic arc hectic.

Commissioner Lund made a motion authorizing the legal notice for the county to be the certifying officials and move the EDI Grant to HUD for the Daly Mansion renovation and restoration grant forward. Commissioner Thompson seconded the motion and all voted 'aye'. Sharon will work with Skip on the legal notice.

The Board held budget hearings for Justice Court #1 and #2 and GIS during the later part of the afternoon.